

89-517①

Supreme Court, U.S.
FILED

SEP 25 1983

JOSEPH F. SPANIOL, JR.
CLERK

No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1989

ROBERT WOODS,

Petitioner,

vs.

JOSEPH E. HUDAK,

Respondent.

Writ of Certiorari
to the United States Court
of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN M. SILVESTRI, ESQ.
Attorney for Petitioner
828 Frick Building
437 Grant Street
Pittsburgh, PA 15219-6002
(412) 391-0958

227



I. QUESTION PRESENTED FOR REVIEW

WHERE THE DISTRICT COURT (1) WITHDREW FROM THE BANKRUPTCY COURT ITS REFERENCE OF AN INJUNCTION ACTION RELATED TO A THEN-PENDING BANKRUPTCY CASE, (2) ENTERED AN ORDER APPROVING A STIPULATION TO PROTECT THE PROPERTY OF THE DEBTOR'S ESTATE, AND (3) AFTER THE BANKRUPTCY CASE WAS DISMISSED, CONDUCTED FURTHER PROCEEDINGS TO ENFORCE SAID ORDER PROTECTING THE PROPERTY OF THE DEBTOR'S ESTATE, DID THE CIRCUIT COURT OF APPEALS ERR IN AFFIRMING SAID FURTHER PROCEEDINGS SUBSEQUENT TO THE DISMISSAL OF THE UNDERLYING BANKRUPTCY CASE, IN THAT (A) THE JURISDICTION OF THE DISTRICT COURT WAS ORIGINALLY INVOKED AS "RELATED TO" A BANKRUPTCY CASE; (B) THE CONDUCT REGULATED BY SAID ORDER WHILE SAID BANKRUPTCY CASE WAS PENDING WAS TO PRESERVE THE PROPERTY OF THE DEBTOR'S ESTATE; (C) THERE WAS NO INDEPENDENT JURISDICTIONAL BASIS FOR THE SUBJECT MATTER OF THE PROCEEDING; AND (D) THE CONTINUED EXERCISE OF JURISDICTION OF THE DISTRICT COURT AFTER THE DISMISSAL OF THE BANKRUPTCY CASE CANNOT BE RELATED TO THE PRESERVATION OF THE PROPERTY OF THE ESTATE?¹

¹In the Injunction Action, there were two other parties who are co-defendants with your Petitioner, and they are neither petitioners nor respondents herein, i.e., Michael S. Geisler and Richard O'Brien.



II. TABLE OF CONTENTS

	<u>Page</u>
I. Question Presented For Review. . .	1
II. Table Of Contents.	2
III. Table of Authorities	3
IV. References To The Official And Unofficial Reports Of Opinions Delivered By The Courts	5
V. Concise Statement Of The Grounds On Which The Jurisdiction Of This Court Is Invoked.	6
VI. Statutes Which The Case Involves.	7
VII. Concise Statement Of The Case. .	8
VIII. Argument	14

III. TABLE OF AUTHORITIES

	<u>Page</u>
Hudak v. Woods, 91 B.R. 718 (W.D. Pa., 1988).	5
In re Franklin, 802 F.2d 324 (9th Cir., 1986). . . . .	.26, 27
In re Petty, 848 F.2d 655 (5th Cir., 1988). . . . .	.14, 29, 30
Murphy v. John Hoffman Co., 211 U.S. 562, 29 Supreme Ct. 154, 53 L.Ed. 327 (1909). . . .	.29
Nationwide Mutual Fire Insurance v. T&D Cottage Auto, 705 F.2d 685 (3rd Cir., 1983). . . . .	.27
Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50, 102 Supreme Ct. 2858, 73 L.Ed.2d 590 (1982) . . .	.10, 16, 20
Railway Labor Executives' Assn. v. Gibbons, 455 U.S. 457, 102 Supreme Ct. 1169, 71 L.Ed.2d 335 (1982)	16, 17, 23, 25
Turner v. The President, Directors and Company of the Bank of North America, 4 Dall. 7, 1 L.Ed. 718 (1799). . . . .	.17, 18, 19

<u>Table of Authorities (Cont.)</u>	<u>Page</u>
Bankruptcy Code, Title 11, Chapter 5 . . . . .	.24
Bankruptcy Code, Title 11, Chapter 7 . . . . .	.24
Supreme Court Rule 20.2.	6
U.S. Constitution, Art. I, Sec. 8, Cl. 4 . . . . .	.15, 16
U.S. Constitution, Art. I, Sec. 8, Cl. 18. . . . .	.15
U.S. Constitution, Art. III, Sec. 2, Cl. 1 . . . . .	.15
11 U.S.C. §101, et seq.. . . . .	.15
11 U.S.C. §349 . . . . .	.24, 28, 29
11 U.S.C. §541 . . . . .	.23
28 U.S.C. §157 . . . . .	.10, 16, 22
28 U.S.C. §1334. . . . .	.7, 10, 16, 19, 22, 25, 27
28 U.S.C. §1335. . . . .	.27
28 U.S.C. §1441. . . . .	.10
28 U.S.C. §1471. . . . .	.16, 19, 27
28 U.S.C. §2101(c)	6



IV. REFERENCES TO THE
OFFICIAL AND UNOFFICIAL
REPORTS DELIVERED BY THE COURTS

The Opinion in the United States Court of Appeals for the Third Circuit at Nos. 89-3030, 89-3043, 89-3069 and 89-3070 was not for publication and is appended at A-1.

There are a series of slip opinions in the United States District Court for the Western District of Pennsylvania at Civil Action No. 87-1999 as follows:

The Memorandum Opinion of October 1, 1987 following the Consent Decree stipulation of September 30, 1987 is appended at A-55.

The Memorandum Opinion of October 21, 1988 denying the Motion to dismiss district court proceedings after the dismissal of the bankruptcy case is reported at Hudak v. Woods, 91 B.R. 718 (W.D. Pa., 1988) and is appended at A-64.



The Opinion of December 22, 1988 which incorporates Findings of Fact and Conclusions of Law following a series of hearings in the district court after the dismissal of the bankruptcy case is appended at A-79.

The Memorandum Opinion of January 3, 1989 following post-trial motions in respect of the December 22, 1988 adjudication is appended at A-188.

V. CONCISE STATEMENT
OF THE GROUNDS ON WHICH
JURISDICTION OF THIS COURT IS INVOKED

Jurisdiction for this Petition for Writ of Certiorari is pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 20.2 which provide for the filing of a Writ of Certiorari intended to bring before the United States Supreme Court a judgment in a civil action for review from a United States Court of Appeals.



The date of the judgment sought to be reviewed is June 28, 1989, which judgment was entered in the United States Court of Appeals for the Third Circuit.

VI. STATUTES WHICH THE CASE INVOLVES

This case involves the bankruptcy jurisdiction statute at 28 U.S.C. §1334(a), (b) and (d) as follows:

28 U.S.C. §1334.

Bankruptcy cases and proceedings.

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under Title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising



under Title 11, or
arising in or related
to cases under
Title 11.

* * *

(d) The district court
in which a case under
Title 11 is commenced
or is pending shall
have exclusive
jurisdiction of all of
the property, wherever
located, of the debtor
as of the commencement
of such case, and of
property of the
estate.

VII. CONCISE STATEMENT OF THE CASE

This proceeding commenced on
September 16, 1987 as an Ex Parte Motion
For A Temporary Restraining Order (the
"Injunction Action") by the debtor in
bankruptcy in the United States
Bankruptcy Court for the Western
District of Pennsylvania during the
pendency of a bankruptcy case (A-192).
The underlying bankruptcy case was filed
July 15, 1987.



Pursuant to a stipulation for "Consent Order" entered September 30, 1987 (A-203) in the Injunction Action, the district court entered an Order on October 1, 1987 (A-208) withdrawing it's reference of said Injunction Action to the district court.

The subject matter of said Injunction Action was to prevent certain parties, including your Petitioner, from interfering with the property of the debtor's estate consisting of contractual relations of the debtor. Although the debtor did not plead in his Injunction Action the basis of jurisdiction in the bankruptcy court or the district court, and although nowhere in the series of Opinions in the district court is there a statutory reference to the jurisdiction of the bankruptcy court or the district court, it is acknowledged that the subject



matter of the Injunction Action at the time the same was filed and at the time the stipulation of "consent order" was entered was clearly pursuant to 28 U.S.C. §1334(a), (b) and (d) as set forth in the Opinion of the Court of Appeals (A-22), as well as 28 U.S.C. §1441(a), (b) and (e) (to the extent not declared void in the case of Northern Pipeline Co. v. Marathon Pipeline Co., 458 U.S. 50, 73 L.Ed.2d 598, 102 Supreme Ct. 2858 [1982]) and 28 U.S.C. §157. All of said statutory bases of jurisdiction require that said Injunction Action be "related to" or "arising under" a bankruptcy case. There is no other jurisdictional basis for the Injunction Action, except as being "related to" the underlying bankruptcy case.

On November 30, 1987, the underlying bankruptcy case was dismissed



without any retention of jurisdiction (A-210).

On March 31, 1988, after the dismissal of the bankruptcy case, the debtor filed a Motion for Contempt (A-212) in respect of alleged conduct subsequent to the dismissal of the underlying bankruptcy case on the part of your Petitioner and others. A second similar Motion for Contempt was filed by the Debtor April 7, 1988 (A-241), as well as additional similar Motions for Contempt, however, only said March 31, 1988 and April 7, 1988 Motions for Contempt were the subject of district court hearings.

On September 23, 1988, your Petitioner filed in the district court a Motion to dismiss said contempt proceedings (A-247) averring, inter alia, the lack of jurisdiction over the subject matter of the debtor's Motions



for Contempt given the fact that the bankruptcy case had been dismissed the preceding year and the stipulation of "consent order" and the district court Order of October 1, 1987 regulating the conduct of the debtor, your Petitioner and others, vis-a-vis one another, was no longer "related to" or "arising under" the bankruptcy case or otherwise necessary for the preservation of the property of the debtor's estate. Said Motion to dismiss the contempt proceedings was denied by a district court Order dated October 21, 1988 (A-254).

Following a series of hearings on said debtor's Motions for Contempt, the district court entered an Order dated December 22, 1988 finding contempt and providing direction for a means by which your Petitioner and the other parties could purge themselves from contempt,



along with supplemental prohibitions relative to the future conduct of the debtor, your Petitioner and the other parties to the Injunction Action (A-255). Post-trial motions, including a Motion for Reconsideration, were filed by your Petitioner and the other co-defendants, all of which were denied by a district court Order of January 9, 1989 (A-269).

Your Petitioner and the other Injunction Action defendants filed timely appeals to the United States Court of Appeals for the Third Circuit, which affirmed the district court's contempt Order of December 22, 1988, but with modifications as to certain restrictions placed upon the parties by the district court. The issue as to the jurisdiction of the district court for conducting proceedings postdating the dismissal of the bankruptcy case on November 30, 1987 was decided favorably to the debtor, the Respondent herein.



Since the disposition of the Petitioner's appeal in the United States Court of Appeals for the Third Circuit, the district court has continued to exercise jurisdiction over the conduct of the parties, including your Petitioner.

VIII. ARGUMENT

It is respectfully suggested that the United States Court of Appeals for the Third Circuit has rendered a decision which is in conflict with In re Petty, -848 F.2d 655 (5th Cir., 1988), and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of jurisdiction by the Supreme Court.



A. THE CONSTITUTIONAL PROVISIONS

The Constitution at Art. I, Sec. 8, Cl. 4, provides that Congress shall have power "to establish...uniform Laws on the subject of Bankruptcies throughout the United States." Under this constitutional provision, Congress was empowered to legislate the Bankruptcy Code, 11 U.S.C. §101, et seq.

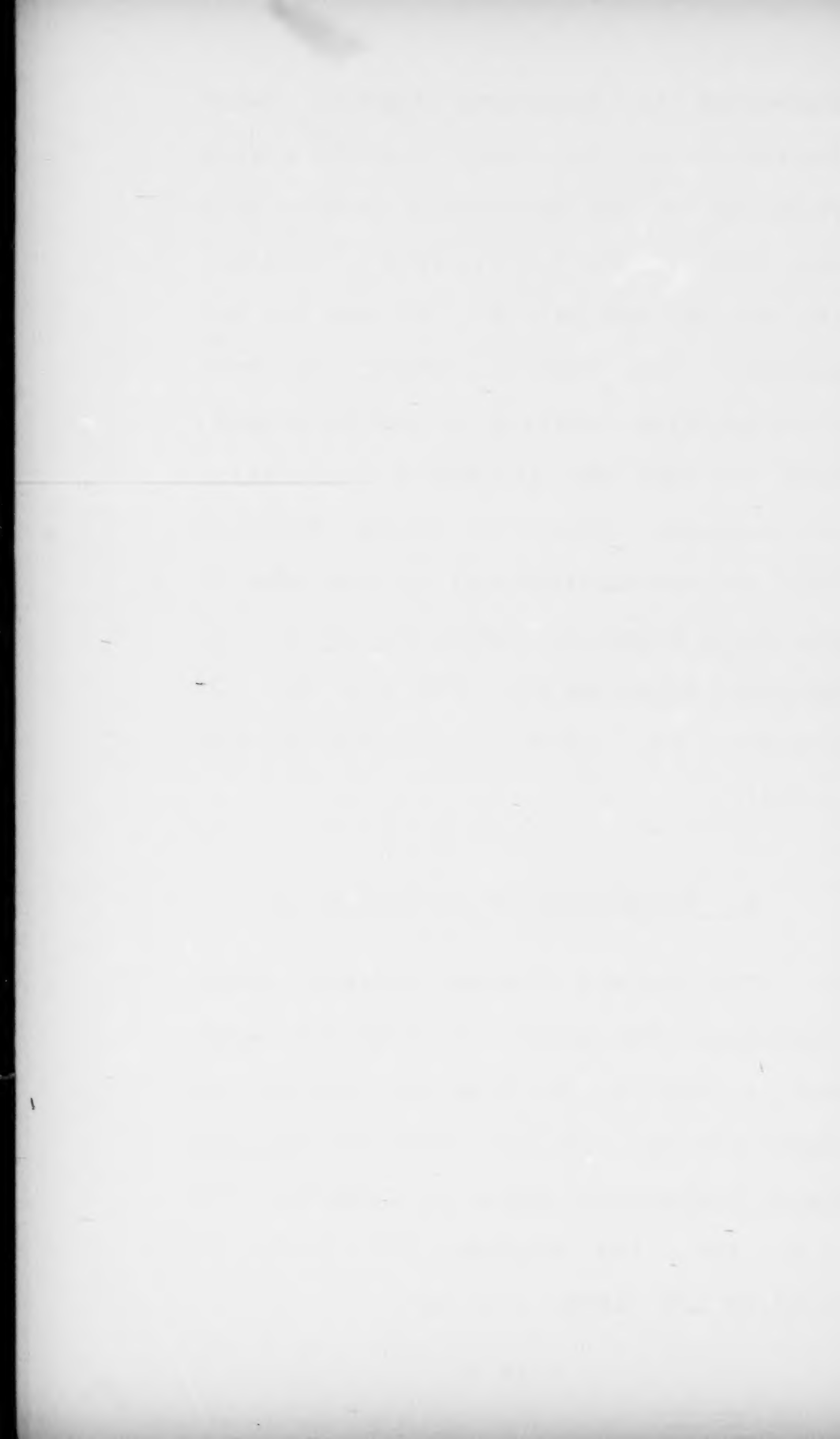
The Constitution at Art. I, Sec. 8, Cl. 18, provides that Congress shall have power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States...", and Art. III, Sec. 2, Cl. 1, provides that "the judicial Power shall extend to all cases, in Law and Equity, arising under...the Laws of the United States...". Under these two constitutional provisions, Congress was



empowered to legislate federal court jurisdiction to hear controversies relating to the Bankruptcy Code. This was done at 28 U.S.C. §§157, 1334(a), (b) and (d) and 1471(a), (b) and (e) and empowers the federal courts to hear controversies relating to the Bankruptcy Code through the aforesaid legislation of Congress (§1471(c) being declared void as unconstitutional in the case of Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50, 102 Supreme Ct. 2858, 73 L.Ed.2d 590 [1982])).

B. PRINCIPLES OF JURISDICTION

The United States Supreme Court discussed the power of Congress under Art. I, Sec. 8, Cl. 4 on the "subject of bankruptcies" in the case of Railway Labor Executives' Assn. v. Gibbons, 455 U.S. 457, 102 Supreme Ct. 1169, 71 L.Ed.2d 335 (1982) stating:



Although we have noted that "[t]he subject of bankruptcies is incapable of final definition," we have previously defined "bankruptcy" as the "subject of the relations between an insolvent or non-paying or fraudulent debtor and his creditors, extending to his and their relief." [Citations omitted.] Congress' power under the Bankruptcy Clause "contemplate[s] an adjustment of a failing debtor's obligations." Ibid. This power "extends to all cases where the law causes to be distributed, the property of the debtor among his creditors." [455 U.S. at 466, 71 L.Ed.2d at 344]

In the case of Turner v. The President, Directors and Company of the Bank of North America, 4 Dall. 7, 1 L.Ed. 718 (1799), the basic principle of the federal courts being courts of limited jurisdiction was set forth and



has been consistently embraced since then. In Turner, it is stated:

A circuit court, however, is of limited jurisdiction; and has cognizance, not of cases generally, but only of a few specially circumscribed, amounting to a small proportion of the cases, which an unlimited jurisdiction would embrace. And the fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction til the contrary appears. This renders it necessary, inasmuch as the proceedings of no court can be deemed valid further than its jurisdiction appears, or can be presumed, to set forth upon the record of a circuit court, the facts or circumstances, which give jurisdiction, either expressly, or in such a manner as to render them certain by legal intendment.



[4 Dall. at 10,
1 L.Ed. at 719]

C. JURISDICTIONAL STATUTES

The statutes providing jurisdiction for the courts to adjudicate disputes relating to the Bankruptcy Code are at 28 U.S.C. §1334(a), (b) and (d) a re-enactment of §1471(a), (b) and (e) and they give very broad jurisdiction to the district courts in bankruptcy cases through the use of the language at both 28 U.S.C. §§1334(b) and 1471(b) which states in pertinent part:

...the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11.

This broad statutory grant of jurisdiction by Congress was recognized



in Northern Pipeline, supra., which stated:

This jurisdictional grant empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate once a petition has been filed under Title 11. [Emphasis supplied; 458 U.S. at 54, 73 L.Ed.2d at 604]

C. THE "OUT OF BOUNDS"
JURISDICTION EXERCISED IN THIS CASE

In this case, neither the district court's Memorandum Opinion (A-64) denying your Petitioner's Motion to Dismiss the district court proceedings nor the district court Opinion (A-79) adjudicating contempt made any analytical discussion of the statutory jurisdictional basis for jurisdiction, however, the district court Opinion adjudicating contempt stated:



This action came to me as acting Miscellaneous Judge while the members of the district court and bankruptcy court attended a judicial conference in Philadelphia. It came as an adversary proceeding related to a bankruptcy case which had been initiated on July 15, 1987 by Yaier Y. Lehrer, Esq. on behalf of creditors against Joseph E. Hudak, an attorney.

When I saw that possible harm was being done not only to the plaintiff, but to a multitude of innocent clients who had paid money to have bankruptcy and divorce cases filed and processed, and with possible disrepute and harm to the legal profession and the courts, I accepted the matter as a district court action with equitable concerns and powers and accepted jurisdiction of the case for the purpose of seeing that public justice was done.

[A-79]

7

It is acknowledged that when the debtor's Injunction Action (A-192) was filed in the bankruptcy court while the debtor's bankruptcy case was pending, and when the district court withdrew the Injunction Action pursuant to 28 U.C.S. §157(d) under the stipulation for "consent order" of the parties (A-203) approved by the district court by its Order entered October 1, 1987 (A-208) there was jurisdiction under 28 U.S.C. §1334. However, at the time said Motions for Contempt were filed in the district court on March 31, 1988 (A-212) and on April 7, 1988 (A-241), after the dismissal of the underlying bankruptcy proceeding for alleged conduct postdating the dismissal of the underlying bankruptcy proceeding there was no jurisdiction.

The reason jurisdiction is acknowledged at the time the Injunction



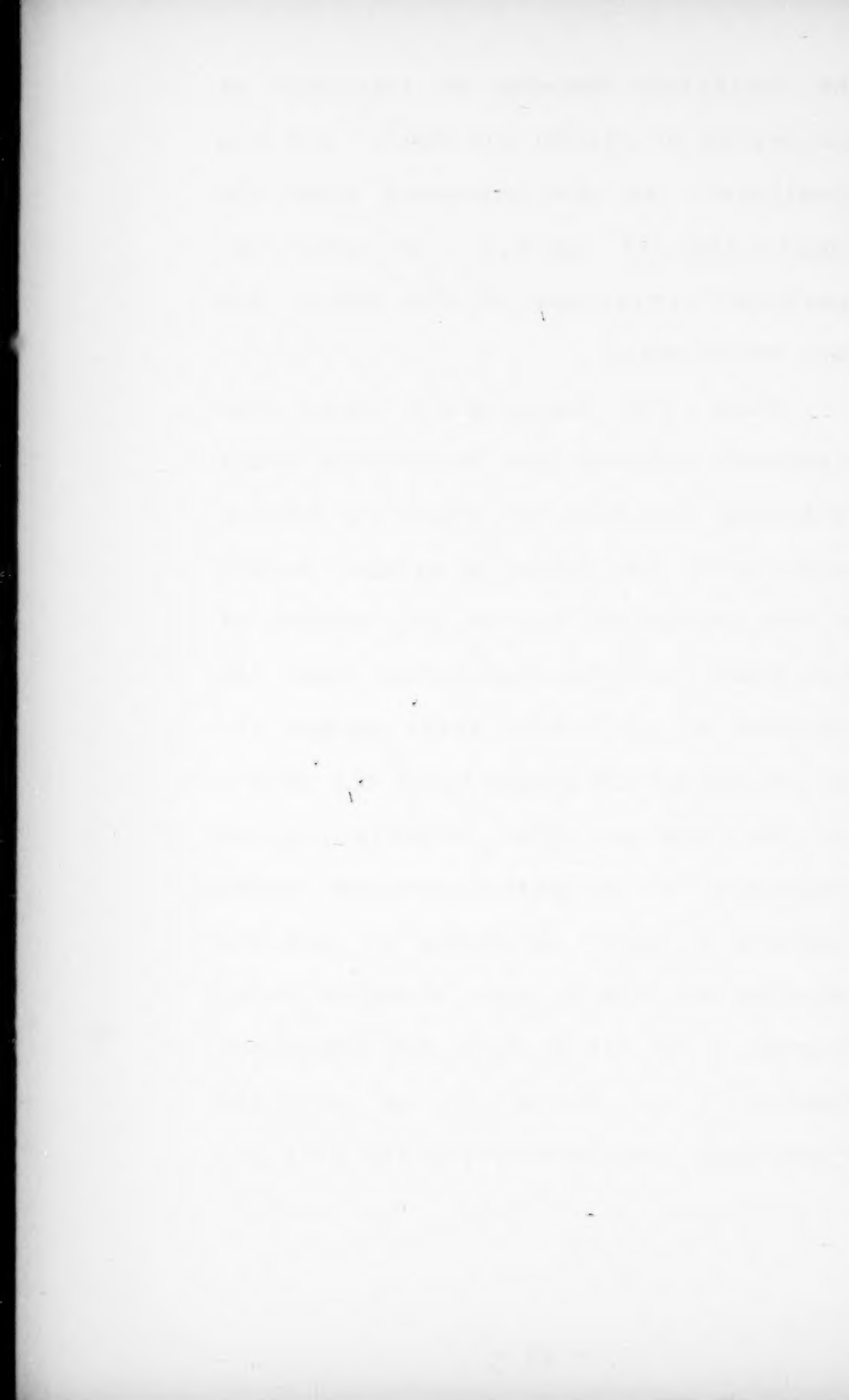
Action was filed during the pendency of the underlying bankruptcy case is because the Injunction Action sought to enjoin your Petitioner from interfering with the debtor's contractual relations with his clients, which contractual relations were "property of the estate" under 11 U.S.C. §541. Accordingly, it follows that the Order entered October 1, 1987 was not only jurisdictionally proper, but appropriate, for the protection of the property of the debtor's estate and for the purposes of regulating the "relations between an insolvent or non-paying or fraudulent debtor and his creditors; see Railway Labor Executives' Assn., supra.

The purpose and intent of the Order could only have been in relationship to the preservation of the property of the debtor's estate and the regulation of



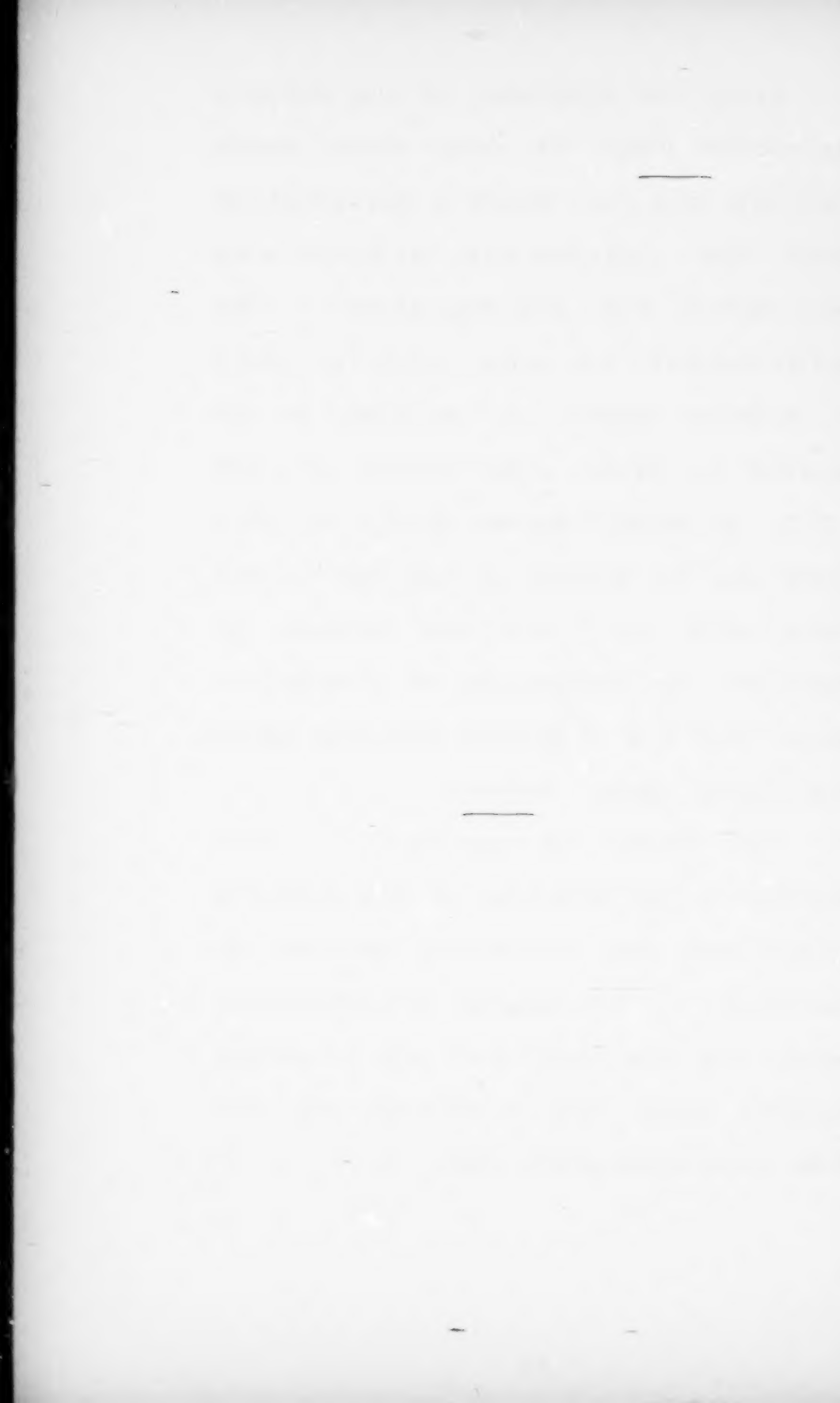
the "relations between an insolvent or non-paying or fraudulent debtor and his creditors", as distinguished from the regulation of merely "private" or "personal" relations of the debtor and your Petitioner.

When the bankruptcy case was dismissed without the bankruptcy court retaining jurisdiction over any of the property of the debtor's estate (A-210) or the Injunction Action the "effect of dismissal" of the bankruptcy case (as provided at 11 U.S.C. §349) caused the re-vesting of the property of the estate in the debtor, the reinstating of transfers of property avoided under Chapters 5 and 7 of Title 11 and the vacating of orders and judgments under Chapter 5 of Title 11. The important Chapter 5 of Title 11 is entitled "Creditors, the Debtor, and the Estate".



After the dismissal of the subject bankruptcy case, it only makes sense that the district court's jurisdiction over the Injunction Action was terminated and relinquished. The enforcement of any orders made "...arising under...or arising in or related to cases under Title 11" (28 U.S.C. §1334[b]) became moot, in that there was no estate of the debtor and there were no "relations between an insolvent or non-paying or fraudulent debtor and his creditors (Railway Labor Executives' Assn., supra.).

The Order of October 1, 1987 regulating the property of the debtor's estate and the "relations between an insolvent or non-paying or fraudulent debtor and his creditors" was in effect vacated upon the dismissal of the underlying bankruptcy case.



The Opinion of the Third Circuit Court of Appeals in sustaining the district court's exercise of jurisdiction was based upon a misinterpretation of In re Franklin, 802 F.2d 324 (9th Cir., 1986), which permitted a bankruptcy court to construe a relief from stay order made in a prior bankruptcy proceeding for the same debtor in a subsequent (third) petition for bankruptcy. As the Franklin court stated:

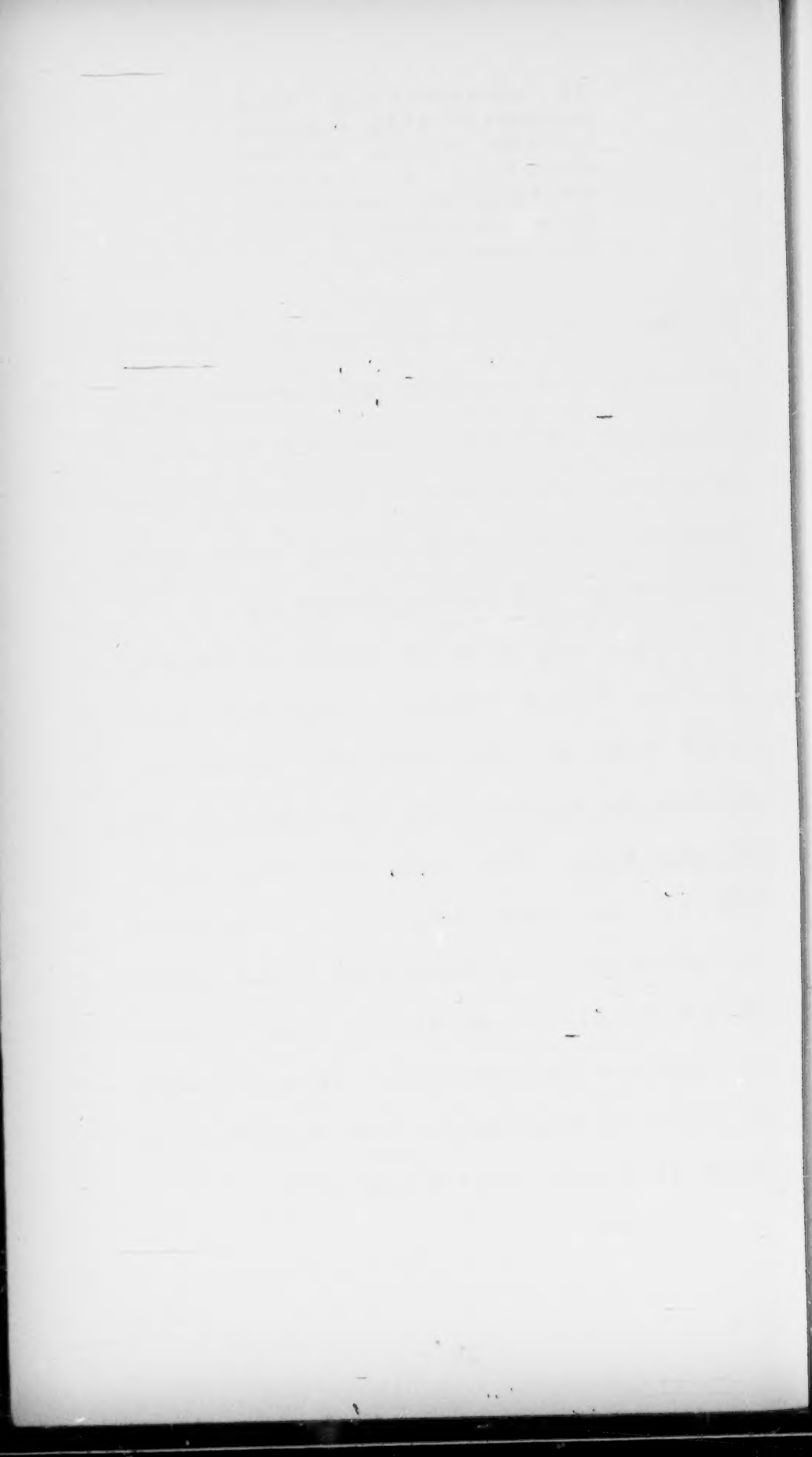
Beneficial Trust's ex parte application to determine the validity of the June 14 foreclosure sale was basically in the nature of a declaratory judgment action requiring the bankruptcy court to construe the validity and effect of its prior order. The application required Judge Lasarow to decide whether Judge Dooley's order of the court entering the stipulation of the parties had the effect



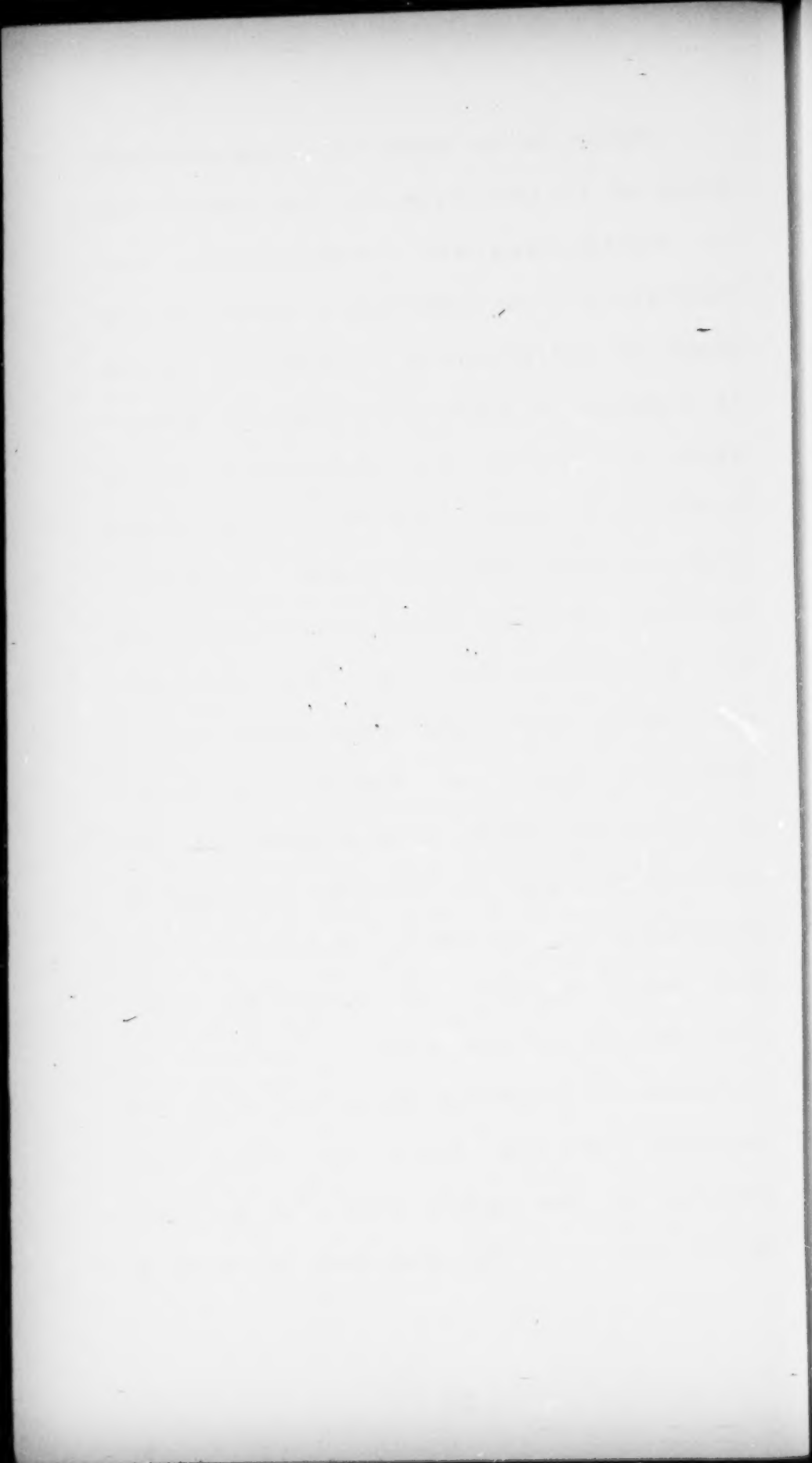
of preventing the automatic stay imposed by the filing of the debtor's third bankruptcy petition from interfering with the June 14 sale.

In fact, when the declaratory judgment action by the creditor of Franklin In re Franklin sought the declaratory judgment, there was a bankruptcy case pending, i.e., the third bankruptcy petition by the debtor Franklin!

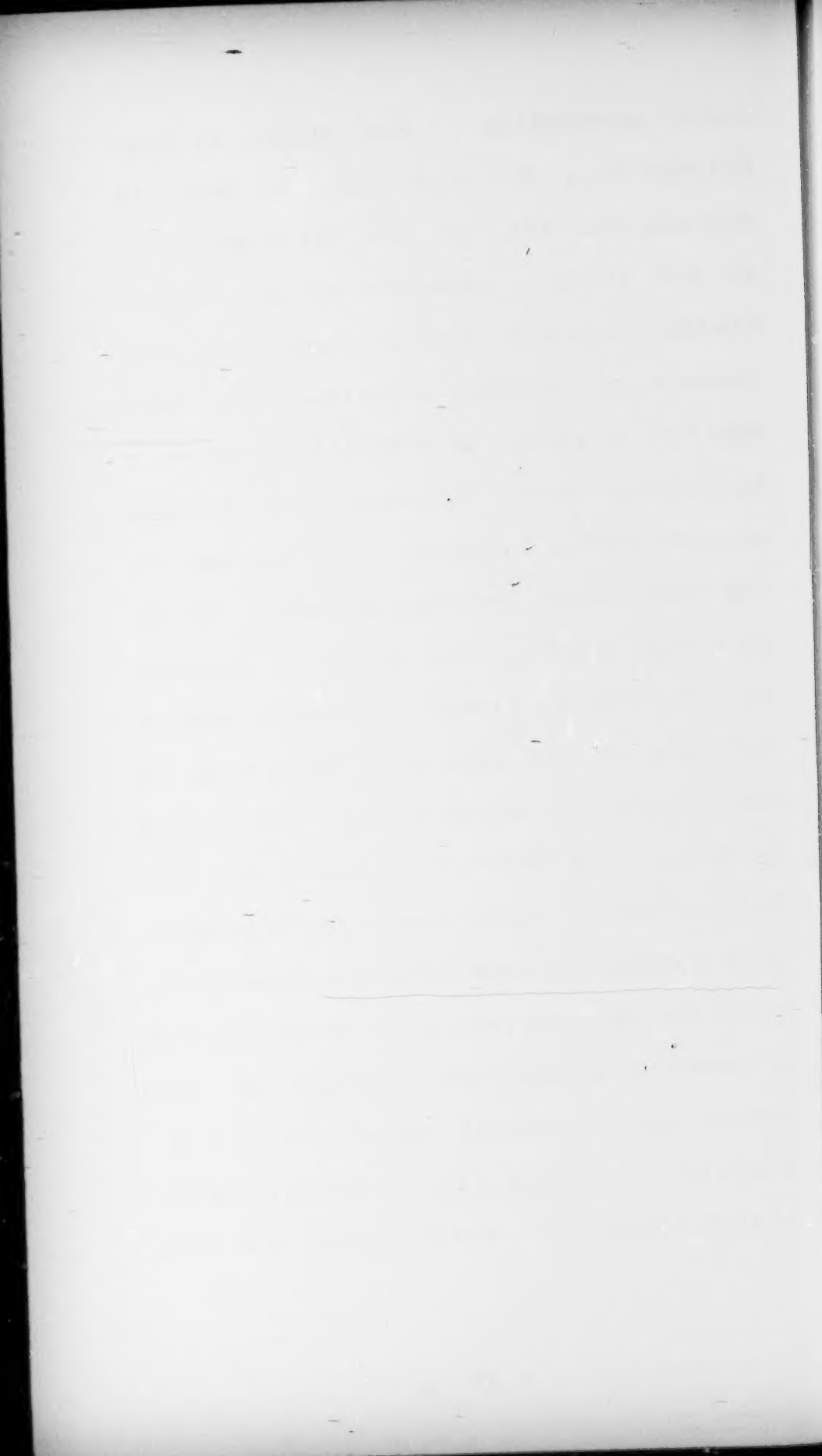
Also, the Circuit Court of Appeals for the Third Circuit inappropriately cited one of its previous decisions, Nationwide Mutual Fire Insurance v. T&D Cottage Auto, 705 F.2d 685 (3rd Cir., 1983), on the topic of "pendent jurisdiction" (a diversity case under 28 U.S.C. §1335) as if the same concept of "pendent jurisdiction" is applicable to Title 11 Bankruptcy Code jurisdiction under 28 U.S.C. §§1334 and 1471.



There is no specific congressional grant of jurisdiction for the resolution of controversies "unrelated", but "ancillary", to bankruptcy cases in its grant of jurisdiction to district courts in respect of bankruptcy cases. Except when an order of dismissal in a bankruptcy case retains jurisdiction over certain matters under 11 U.S.C. §349(b), of which there was no retention of jurisdiction in the subject bankruptcy case, the only exception to district court or bankruptcy court jurisdiction after a dismissal of the bankruptcy case is for the purpose of disposing any property deposited with the court registry or otherwise under the control of the court. In such an instance of property deposited with the registry of the court or under the control of the court, there is a "res" which can only be disposed through a



court proceeding. See Murphy v. John Hoffman Co., 211 U.S. 562, at 569, 29 Supreme Ct. 154, at 157, 53 L.Ed. 327, at 330 (1909). Nowhere in any United States Supreme Court case has the concept of "pendent" jurisdiction been applied to permit a district court or a bankruptcy court to resolve a dispute brought before it after the dismissal of the underlying bankruptcy case. In In re Petty, supra., the Court of Appeals for the Fifth Circuit reached a result contrary to the result in this case by the Court of Appeals for the Third Circuit. The Court of Appeals for the Fifth Circuit ruled that the dismissal of a bankruptcy case caused a bankruptcy court to lack jurisdiction to adjudicate a pending proceeding because of the effect of dismissal under 28 U.S.C. §349(b). In re Petty specifically states that to permit the further

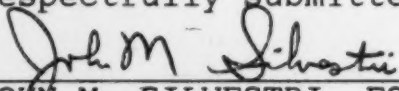


exercise of jurisdiction by a bankruptcy court after the dismissal of an action:

...would be inconsistent with the language and express purpose of [28 U.S.C.] §349(b), by which Congress sought to restore property rights to their pre-action status...

Not only is there a conflict between the Courts of Appeals for the Fifth Circuit and the Third Circuit in respect of the exercise of federal court jurisdiction following the dismissal of a bankruptcy case, but the Third Circuit's notion of injecting "pendent" jurisdiction into Bankruptcy Code matters will tend to defeat the intent of Congress in providing for expeditious resolution of bankruptcy cases by adding judicial work "unrelated" to a bankruptcy case.

Respectfully submitted,


JOHN M. SILVESTRI, ESQ.
Attorney for Petitioner